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(A)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1125.

S. B. ARBUCKLE, PLAINTIFF IN ERROR,

vs.

P. J. QUIGLEY, CLERK OF THE COUNTY COURT OF SHELBY COUNTY; TENNESSEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED SEPTEMBER 22, 1888.

SUPREME COURT OF THE UNITED STATES.

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No. 1125.

S. B. ARBUCKLE, PLAINTIFF IN ERROR,

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JUDD & DETWEILER, PRINTERS, WASHINGTON, SEPTEMBER 24, 1888.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court, before you, between P. J. Quigley, clerk of the county court of Shelby county, Tennessee, plaintiffs, and S. B. Arbuckle, defendant, a manifest error hath happened, to the great damage of the said Arbuckle, as by complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, 1888, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Samuel F. Miller, senior justice of the Supreme Court of the United States, and the seal of the United States circuit court, at Memphis, this 27th day of June, A. D. 1888, and the 112 of American Independence.

[Seal Circuit Court of the United States for the District of West Tennessee.]

JOHN B. CLOUGH, *Clerk.*

2 [Endorsed:] No. —. Circuit court of the United States, western district of Tennessee. S. B. Arbuckle *vs.* P. J. Quigley, clerk of county court, etc. Writ of error. Issued the 27 day of June, A. D. 1888. J. B. Clough, clerk. Filed July 14, 1888. Jno. W. Buford, cl'k.

3 UNITED STATES OF AMERICA:

To P. J. Quigley, clerk of the county court of Shelby county, Tennessee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October, 1888, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Tennessee, wherein P. J. Quigley, clerk of the county court of Shelby county, Tennessee, is plaintiff and S. B. Arbuckle, defendant in error, to show cause, if there be any, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Peter Turney, chief justice of the supreme court of the State of Tennessee, this 27th day of June, 1888.

P. TURNEY,
Chief Justice Supreme Court Tennessee.

Filed July 14, 1888.

JNO. W. BUFORD, *Clerk.*

4 [Endorsed:] No. —. Circuit court of the United States, western district of Tennessee. S. B. Arbuckle *vs.* P. J. Quigley, clerk of county court, etc. Citation. Filed the 27 day of June, A. D. 1888. —— ——, clerk.

I now acknowledge & accept service of the within citation & notice, & further acknowledge that copy of the writ of error in this cause has been left with me this 13th day of June, 1888.

P. J. QUIGLEY,
County Court Clerk of Shelby County, Tenn.

5 In the Circuit Court of the United States within and for the Western District — Tennessee.

P. J. QUIGLEY, Clerk of County Court,
vs.
S. B. ARBUCKLE, Defendant.

Know all men by these presents that we, S. B. Arbuckle, as principal, and T. B. Turley and L. E. Wright, as sureties, are held and firmly bound unto P. J. Quigley, clerk of the county court of Shelby county, Tennessee, in the sum of five hundred dollars, to be paid to the said P. J. Quigley, clerk county court aforesaid; to which payment, well and truly to be made, we and each of us bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with seals, signed, and dated this 27th day of June, A. D. 1888.

6 Whereas the above-named S. B. Arbuckle has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Tennessee:

Now, therefore, the consideration of this obligation is such that if the above-named S. B. Arbuckle shall prosecute the said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise remain in full force and virtue.

S. B. ARBUCKLE, [SEAL.]
By L. E. WRIGHT, *His Att'y.*
T. B. TURLEY. [SEAL.]
LUKE E. WRIGHT. [SEAL.]

Acknowledged before me this 27th day of June, 1888, and I certify the sureties to be sufficient.

J. B. CLOUGH,
Clerk U. S. Circuit Court.

7 This bond is hereby approved on the date of its said acknowledgement before the clerk.

P. TURNEY,
Chief Justice of the Supreme Court of the State of Tennessee.

Filed July 14th, 1888.

JNO. W. BUFORD, *Clerk.*

8 STATE OF TENNESSEE:

At a term of the circuit court of Shelby county begun and held at the city of Memphis or taxing district of Shelby county, at the court-house, on the third Monday of May, 1887.

Present and presiding: Hon. L. H. Estes, judge; also present, Dan'l Schloss, clerk of said court, and W. D. Cannon, sheriff of Shelby county, when the following proceedings were had, to wit:

Summons. Issued May 30th, 1887.

STATE OF TENNESSEE, *Shelby County,* } *sct:*

To any lawful officer to execute and return:

9 You are hereby commanded to summon P. J. Quigley, clerk of the county court of Shelby county, Tennessee, if to be found in your county, to appear before me, or some other justice of the peace in and for said county, to answer S. B. Arbuckle in a plea of debt, to recover the sum of $6.00, paid him under protest, for the privilege of selling fruit trees as agent of Franklin Davis & Co., citizens of Virginia, and doing business in said State.

Given under my hand and seal this 30 day of May, A. D. 1887.

A. R. POPE, *J. P.* [SEAL.]

Endorsed: Came to hand 30 day of May, 1887, and executed 30 day of May, 1887, on P. J. Quigley, and for trial May 30, 1887, before A. R. Pope, Esq., at 10 o'clock, a. m.

W. D. CANNON, *Sh'ff.*
JOHN R. MILLER, *D. S.*

Judgment for defendant for costs of the suit.

10 *Costs.*

Iss. sums., .25; ex. sums., 1.00; judgment, .75; docket, .15; appeal bond, .50.

May 30th, 1887.

A. R. POPE, *J. P.* [SEAL.]

$2.15 paid on costs by plaintiff.

Appeal Bond.

STATE OF TENN., *Shelby Co.:*

We, S. B. Arbuckle, principal, and L. E. Wright, as surety, acknowledge ourselves to owe the State of Tenn. two hundred and fifty dollars.

Witness our hands this 30th of May, 1887.

The condition of the above obligation is as follows: The said Arbuckle, plaintiff in above cause, has appealed from the judgment of A. R. Pope, J. P., giving judgment against him and in favor
11 of said Quigley:

Now, if said Arbuckle shall prosecute said appeal with effect or in case of failure to do so pay all costs in said cause accrued, then this obligation to be void; otherwise to remain in full force.

S. B. ARBUCKLE.
L. E. WRIGHT.

Papers and bond filed May 30th, '87.

J. P. YOUNG, *D. C.*

Agreed Statement. Filed June 4th, 1887.

S. B. ARBUCKLE *vs.* P. J. QUIGLEY, County Court Clerk.

Agreed state of facts.

It is agreed between the undersigned, respectively, attorneys for plaintiff and defendant in the above cause, that the plaintiff,
12 S. R. Arbuckle is the agent and employee of the firm of Franklin Davis & Co., of the city of Richmond, in the State of Virginia; that said firm is composed of Franklin Davis and Edward H. Bissell, who are citizens and residents of the said city of Richmond and State of Virginia; that they are engaged in business and are near said city, and in said State, in nursery business—that is, with growing fruit and other trees for sale; that said firm are engaged in said business on a very large scale; that said plaintiff, S. B. Arbuckle, a citizen of Shelby county, Tennessee, as such agent and employee, is exclusively engaged in soliciting orders for said firm and occasionally in delivering trees as a part of his duty,
13 as hereinafter set forth—that is to say, in the business of soliciting persons to order from his employers, the said firm of Franklin Davis & Co., their fruit trees, and has been so engaged since the 1st day of May, 1887, and up to the present time; that by the terms of his employment he solicits orders in West Tennessee, North Mississippi, and Western Arkansas, although the bulk of his soliciting has been done in Shelby county, Tennessee, up to this time.

It is furthermore agreed that said firm of Franklin Davis & Co. have none of their stock in the State of Tennessee; that all their trees and stock in trade are grown and located in said State of Virginia; that the exclusive course of dealing between the said S. B. Arbuckle,
14 their said agent, and themselves is that said Arbuckle goes from place to place soliciting orders from persons who desire fruit trees, agrees upon terms of sale and purchase with them, and thereupon sends the orders to said firm of Franklin Davis & Co. at said city of Richmond, Virginia; that upon receipt of said orders for said trees the same are then either shipped by said firm to said Arbuckle, who delivers them to the purchasers in Shelby county and elsewhere, or are shipped direct to the purchasers themselves.

It is furthermore agreed that P. J. Quigley is the duly qualified and acting county court clerk of Shelby county, Tennessee, and has been such for seven months past; that he demanded of said S. B. Arbuckle the payment of the sum of six dollars for the privi-
15 lege of selling fruit trees for the current quarter of the year, and threatened to issue and levy a distress warrant upon his goods and chattles unless he paid the same.

It is furthermore agreed that said plaintiff, S. B. Arbuckle, paid said sum as a privilege to sell fruit trees to said Quigley under protest, and has began this suit to recover back the same.

It is furthermore agreed that the said S. B. Arbuckle is engaged in selling fruit trees in Shelby county only and exclusively in manner and form as above set forth; and this agreed state of facts is here made up and presented to the court for the purpose of testing and determining whether or not he, the said S. B. Arbuckle, is liable to said tax upon the foregoing state of facts.

16 Should the court decide that he is liable, then judgment will be for defendant; should it decide that he is not so liable, then judgment will be for plaintiff for the amount of the sum so paid and the costs.

TURLEY & WRIGHT,
Att'ys for Plaintiff.
GEORGE B. PETERS,
Att'y General and Att'y for Defendant.

This was all the evidence in this cause, & defendant tender- same as his bill of exception, which — signed, sealed, and made part of the record.

June 4, 1887.

L. H. ESTES, *Judge.*

And, to wit, Saturday, June 4, '87, May term, 1887, judgment, &c.

17 S. B. ARBUCKLE
vs.
P. J. QUIGLEY, County Court Clerk. } 9572. T. D.

Came the parties, and, this being a non-jury case, the matters in controversy are tried by the court, and having considered the evidence, which was submitted on an agreed statement of facts, the court finds for the plaintiff and assesses his damages at the sum of six dollars.

It is therefore considered by the court that the plaintiff recover of the defendant the said sum of six dollars and the costs of this cause, for which let execution issue.

Whereupon the defendant prayed and obtained an appeal to the present term of the supreme court of Tennessee, which was granted and perfected.

18 STATE OF TENNESSEE:

I, Dan'l Schloss, clerk of the circuit court of Shelby county, hereby certify that the foregoing 11 pages of words and figures contain a full, true, and complete transcript of all the records and proceedings had in the suit therein named, wherein S. B. Arbuckle — plaintiff and P. J. Quigley, county court clerk, defendant, as the same appears of record and on file in my office.

In testimony whereof I hereto subscribe my name and affix the seal of said court, at my office, in the taxing district of Shelby county, this the 4th day of June, 1887.

[Seal Circuit Court, Shelby County, Tenn.]

DANIEL SCHLOSS, *Clerk.*
J. T. TOMLINSON, *Deputy Clerk.*

19 THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at Jackson, at the April term, A. D. 188–,

Present: The Hon. Peter Turney, chief justice, and D. L. Snodgrass, H. H. Lurton, W. C. Caldwell, and W. C. Folkes, associate judges—

When the following proceedings were had, to wit:

P. J. QUIGLEY, Clerk,
vs.
S. B. ARBUCKLE.
} Shelby Law Docket. # 1086.

MONDAY, *May 28th*, 1888.

This cause was heard upon the transcript of the record from the circuit court of Shelby county, and it appearing to the court that in the judgment of the court below there is manifest error, and — the said judgment of the circuit court be and the same is reversed, and this court doth now enter judgment in favor of said
20 Quigley, clerk, and against the said Arbuckle, defendant in error, and that the plaintiff in error, P. J. Quigley, recover of defendant in error, S. B. Arbuckle, and Luke E. Wright, surety, the costs of the cause, for which let execution issue.

The court is of opinion that upon the facts appearing in the record the said Arbuckle, the plaintiff below, is not entitled to claim immunity from the tax in question under article 1, section 8, of the Constitution of the United States, which article and section *was* set up and relied upon by the plaintiff as affording him such immunity, and that said Arbuckle, plaintiff below, is liable to pay said tax under the facts set forth in the record.

21 THE STATE OF TENNESSEE:

I, John W. Buford, clerk of the supreme court of said State for the western division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect, and complete copy of the record, orders, and decrees in the case of P. J. Quigley, clerk, against S. B. Arbuckle, as appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office, in the city of Jackson, on this the 14th day of August, A. D. 1888, and of the Independence of the United States the 113th year.

[Seal Supreme Court of Tennessee, Western Division, Jackson, Tenn.]

JNO. W. BUFORD, *Clerk*,
By ROB'T LINDSEY, *D. C.*

Endorsed on cover: Tennessee sup. court. No. 1125. S. B. Arbuckle, plaintiff in error, *vs.* P. J. Quigley, clerk of the county court of Shelby county, Tennessee. Filed September 22, 1888.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 1125.

S. B. ARBUCKLE, PLAINTIFF IN ERROR,

vs.

P. J. QUIGLEY, CLERK, DEFENDANT IN ERROR.

In this cause it is stipulated and agreed that upon the facts of the case it falls within the principles decided by this Court, at this term, in the cases of Asher *vs.* Texas, 128 U. S., 129, and Stoutenburg, Intendant of Washington Asylum, *vs.* Hennick, 129 U. S., 141. It is accordingly agreed that the case may be reversed and remanded with instructions to enter judgment for the plaintiff in error.

March 12, 1889.

T. B. TURLEY,
Attorney for Plaintiff in Error.

ISHAM G. HARRIS,
Attorney for Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1179.

CHARLES E. MILLER AND DANIEL G. ROLLINS, EXECUTORS OF CHESTER A. ARTHUR, DECEASED, LATE COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFFS IN ERROR,

vs.

CHARLES B. RICHARD AND EMANUEL BOAS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Charles B. Richard and Emanuel Boas, plaintiffs, and Charles E. Miller & Daniel G. Rollins, executors, &c., of Chester A. Arthur, deceased, defendants, a manifest error hath happened to the great damage of the said Charles E. Miller & Daniel G. Rollins, executors, &c., of Chester A. Arthur, deceased, &c., as by their complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the fourth Monday of October, eighteen hundred and eighty-eight, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness Hon. Samuel F. Miller, senior Associate Justice of the said Supreme Court, the 24th day of September, in the year of our Lord one thousand eight hundred and eighty-eight.

[SEAL.] JOHN A. SHIELDS,
Clerk.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to thirty-three, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Charles E. Miller and Daniel G. Rollins, executors, &c., of Chester A. Arthur, deceased, plaintiffs in error, against Charles B. Richard and Emanuel Boas, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 29th day of September, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth.

[SEAL.] JOHN A. SHIELDS,
Clerk.

(Indorsed:) 5479. U. S. Supreme Court. Charles E. Miller & ano., executors, &c., plaintiffs in error, against Chas. B. Richard & ano., defend-

ants in error. Writ of error. Stephen A. Walker, attorney for plaintiffs in error. Due service of a copy of the within writ of error is hereby admitted this 24 day of Sept., 1888. Stanley, Brown & Clarke, attorneys for defendants in error. U. S. circuit court. Filed Sep. 24, 1888. John A. Shields, clerk.

3 *Summons.*

Superior court of the city of New York.

CHARLES B. RICHARD & EMANUEL BOAS,
plaintiffs,
against
CHESTER A. ARTHUR, DEFENDANT.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated N. Y., July 8, 1878.

STANLEY, BROWN & CLARKE,
Plaintiffs' Attorneys,
Office and Post-Office Address, No. 195 *Broadway, New York City.*

4 *Complaint.*

Superior court of the city of New York.

CHARLES B. RICHARD & EMANUEL BOAS,
plaintiffs,
against
CHESTER A. ARTHUR, DEFENDANT.

The plaintiffs complain of the defendant, and allege as follows:

First. That at the times hereinafter mentioned the plaintiffs were, and still are, partners in business under the firm-name of C. B. Richard & Boas, and that during the same times the defendant was, and still is, collector of customs of the United States at the port of New York.

Second. That heretofore, and on or about the 13th day of June, 1876, one A. M. Sutton duly imported into the United States, from Liverpool, by the "Lord Clive," certain goods, wares, and merchandise, consisting among other things of eight cases of beads marked respectively M. F. P. 500, 503 to 509.

Third. That on or about the said 13th day of June, 1876, the said merchandise was, with other goods, duly entered by said Sutton, at the port of Philadelphia, for warehouse.

Fourth. That the merchandise thus entered was thereafter duly examined and appraised by the proper officers of the customs, at said
5 port of Philadelphia, and the proper duties and charges thereupon were ascertained and liquidated.

Fifth. That thereafter, and before the 15th day of December, 1876, the said merchandise contained in cases M. F. P., 500, 503 to 509, was duly withdrawn for transportation, and transported in bond from said port of Philadelphia to the port of New York, consigned to the plaintiffs under their firm name of C. B. Richard & Boas, and on or about the 15th day of December, 1876, said goods having arrived at the port of New York aforesaid, the plaintiffs, in order to get possession of said goods, made entry thereof in the usual form of "re-warehousing and withdrawal entry for consumption;" and thereupon paid to the defendant the duties and charges upon said goods as liquidated by the collector of said port of Philadelphia, and all but one of said packages were then and there delivered by defendant to the plaintiffs.

Sixth. That one of said packages was retained by the defendant for examination and comparison, and was held by him until after the additional payment had been made, as hereinafter stated, and that before the liquidation and determination of the defendant, that such additional sum should be paid, more than one year had expired after the liquidation of the original entry by the collector of the port of Philadelphia, and more than one year after payment of the duties as liquidated by said collector.

Seventh. That the defendant, as such collector, exacted from the plaintiffs, as and for additional duties upon said goods, the sum of
6 twenty-four hundred and ninety-six $\frac{70}{100}$ dollars, and that said sum was paid by plaintiffs on June 29, 1878, to the defendant under protest, as hereinafter mentioned.

That this sum was made up as follows: 50 per cent. ad val*a*lorem duty on $1,911, value of the goods beyond the value as liquidated upon entry at Philadelphia, and 20 per cent. ad val*a*lorem upon the entire value claimed by defendant as the value of the goods in question, to wit, $3,853.

Eight. That by the laws of the United States the true duty upon said goods was but $2,897\frac{50}{100}$, the amount as ascertained and liquidated by the collector of the port of Philadelphia, but that plaintiffs, in order to obtain all of said goods, were compelled by the defendant to pay the said sum of $2,496\frac{70}{100}$ in coin, in excess of the amount required by law.

Ninth. That plaintiffs filed with the defendant on August 30, 1877, and March 7, 1878, respectively, due and timely protests in writing against his decision exacting such duty, setting forth distinctly and specifically the ground of objection thereto, copies of which protests are hereto annexed, and made part of this complaint.

Tenth. That on or about March 7, 1878, the plaintiffs made due and timely appeal to the Secretary of the Treasury, who, by answer dated April 10, 1878, affirmed the decision of the defendant.

Eleventh. That no part of said sum of $2,496\frac{70}{100}$ so exacted in excess has ever been repaid to plaintiffs, and the same is still justly due and owing them.

7 Wherefore plaintiffs demand judgment against the defendant for said sum of $2,496\frac{70}{100}$ in coin of the United States, with interest thereon from the 29th day of June, 1878, besides the costs of this action.

STANLEY, BROWN & CLARKE,
Pl'ffs' Att'y's, 195 *Broadway*.

CITY AND COUNTY OF NEW YORK, *ss:*

Emanuel Boas, being duly sworn, says, that he is one of the plaintiffs above named, and that the foregoing complaint is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

E. BOAS.

Sworn to before me this 8th day of July, 1878.

J. H. ROSENBAUM,
Notary Public (95), *N. Y. County.*

8 *Notice of appearance & demand.*

U. S. circuit court.

CHARLES B. RICHARDE ET AL.
versus
CHESTER A. ARTHUR.

You will please take notice that I am retained by, and appear as attorney for, the defendant in this action, and demand service of a bill of particulars of the plaintiffs' claim herein, & all papers in this action upon me, at my office, in the United States court and post-office building, in the city of New York.

Yours,

STEWART L. WOODFORD,
United States Attorney for Defendant.

NEW YORK, *Aug. 3d*, 1878.

To STANLEY, BROWN & CLARKE, *Attorneys for Plaintiffs:*

(Endorsed:) 5479. U. S. circuit court. Charles B. Richarde et al. versus Chester A. Arthur. Notice of appearance. Stewart L. Woodford, U. S. attorney for defendant. To Stanley, B—— & Clarke, plaintiffs' attorneys. Recd. & refused adm. Aug. 3, 1878.

9 The President of the United States of America, to the judges of the superior court of the city of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Chester A. Arthur, defendant, by Charles B. Richard and Emanuel Boas, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 30 day of July, 1878, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 30 day of July, in the year one thousand eight hundred and seventy-eight.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

STEWART L. WOODFORD,
Defendant's Attorney.

10 (Endorsed:) 5479. U. S. circuit court. Charles B. Richard & ano vs. Chester A. Arthur. Copy of certiorari. Stewart L. Woodford, defendant's attorney. Take notice that the within is a copy of a certiorari, this day issued out of the circuit court of the United States for the southern district of New York. New York, July 30, 1878. Yours, Stewart L. Woodford, defendant's attorney. To Stanley, Brown & Clarke, plaintiffs' attorneys.

11 United States circuit court, southern district of New York.

CHARLES B. RICHARD & EMANUEL BOAS
versus
CHESTER A. ARTHUR, COLLECTOR, ETC.

The answer of the defendant herein, by Stewart L. Woodford, his attorney, to the complaint of the plaintiffs in the above-entitled action.

I. He admits he was, at the times in said complaint mentioned, collector of the port of New York, and, in such official capacity, received payment from the plaintiffs for and on account of duties due to the United States, under the laws thereof, upon certain merchandise originally imported into the port of Philadelphia from foreign countries for transportation in bond to the port of New York and afterwards entered for consumption by the plaintiffs at the port of New York, as mentioned in the said complaint.

II. He alleges that any and all moneys received by him from plaintiffs at the times in said complaint mentioned were paid by said plaintiffs as a debt due by them to the United States, and not otherwise; and were received by defendant by virtue of his office as said collector, and under the direction of the Secretary of the Treasury, and for and on account of the United States and were forthwith thereafter, and before the commencement of this action, or the service of any protest, paid into the Treasury
12 of the United States; and that the amount of said moneys, so received from plaintiffs, were the amounts due from them to the United States according to the rate of duty imposed by law upon the several articles of merchandise, imported and entered as aforesaid, and assessed with duty, and no other sums than duties regularly assessed, and ascertained and liquidated according to law upon the plaintiffs' entry thereof, were collected or received by defendant from the plaintiffs.

III. And defendant, further answering, denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint, by the marks and numbers and description there given, except in so far as to state, and defendant, herein answering, doth aver and state that said merchandise were dutiable according to the laws of the United States at the rates at which the same were assessed.

IV. And defendant, further answering, admits that plaintiffs filed with defendant the protest mentioned in said complaint, but he denies that he has sufficient information to form a belief as to whether upon the importation in question an appeal was made by the plaintiffs comformable to the laws of the United States, and defendant leaves plaintiffs to make such proof thereof as they may be advised.

V. And as to any other allegations in said complaint contained, not

hereinbefore fully answered or admitted, defendant denies the same, and each thereof, and leaves the plaintiffs to make such proof thereof as they may be advised.

13 Wherefore defendant demands judgment that the complaint be dismissed with costs.

STEWART L. WOODFORD,
United States Attorney for Defendant.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Chester A. Arthur, being duly sworn, says that he is the defendant above named, that the foregoing answer is true to his own knowledge, except as to the matters stated on information and belief, and as to those matters he believes it to be true.

C. A. ARTHUR.

Sworn to before me this 13 day of September, 1878.
[SEAL.]
S. J. JACOBS,
Notary Public, New York City.

(Endorsed:) 5479. U. S. circuit court, southern district of New York. Charles B. Richard & ano. vs. Chester A. Arthur, collector, etc. (Copy.) Answer. Stewart L. Woodford, United States attorney for defendant. Messrs. Stanley, Brown & Clarke, plaintiffs' attorneys. Rec'd Sept. 14, 1878.

14 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Wednesday the 28th day of January, in the year of our Lord one thousand eight hundred and eighty, present, the honorable Nathaniel Shipman, judge.

CHARLES B. RICHARD ET AL.
vs.
CHESTER A. ARTHUR. } 5479.

This cause being still on trial, the jurors sworn in it are called, and severally answer to their names.

On motion of Mr. Clarke, the court directs the jury to find a verdict for the plaintiffs for the sum of $2,773.41.

The jury say that by direction of the court they find a verdict for the plaintiffs, for the sum of twenty-seven hundred and seventy-three dollars and forty-one cents, and so say they all.

On motion of Mr. Herrick, ordered that the defendant have thirty days stay of proceedings within which to prepare and serve a bill of exceptions herein.

Prior to the rendering and recording of the verdict herein Mr. Herrick excepts to the ruling of the court in directing a verdict for the plaintiffs.

JOHN A. SHIELDS,
Clerk.

15 U. S. circuit court, southern district of New York.

CHARLES B. RICHARD ET AL., *vs.* CHESTER A. ARTHUR. } No. 5479.

By order of this court bearing date the 3 day of January, 1887, it was ordered that Charles E. Miller and Daniel G. Rollins, executors of the last will and testament of Chester A. Arthur, deceased, be substituted as parties defendant in the above action, and that said action stand revived and continued as against them.

16 *Judgment.*

U. S. circuit court, southern district of New York.

CHARLES B. RICHARD AND EMANUEL BOAS *against* CHARLES E. MILLER AND DANIEL G. ROLLINS, executors, &c.

This cause having been brought on for trial before the Hon. Nathaniel Shipman, acting as a judge of this court, and a jury on the 28th day of January, 1880, and the court having directed a verdict in favor of the plaintiffs for the sum of two thousand seven hundred and seventy-three dollars and forty-one cents ($2,773.41), which was so found by the jury,

Now, on motion of Stanley, Brown & Clarke, attorneys for the plaintiffs,

It is adjudged that the plaintiffs, Charles B. Richard and Emanuel Boas, have judgments against the defendants, Charles E. Miller and Daniel G. Rollins, executors of Chester A. Arthur, deceased, for the sum of twenty-seven hundred and seventy-three dollars and forty-one cents ($2,773.41) damages, $1,417.60 interest, and forty-six dollars and eighty-five cents ($46.85) costs; making in all the sum of $4,237.86, and have execution therefor.

Judgment signed this September 24, 1888.

JOHN A. SHIELDS, *Clerk.*

17 (Endorsed): 5479. U. S. circuit court, southern district of New York. Charles B. Richard etal. vs. Charles E. Miller et al., ex'rs, &c. Judgment roll. Stanley, Brown & Clarke, att'ys for plaintiffs, 120 Broadway, N. Y. U. S. circuit court. Filed Sep. 24, 1888. John A. Shields, clerk.

18 *Defendant's bill of exceptions.*

U. S. circuit court, southern district of New York.

CHARLES B. RICHARDS ET AL., *vs.* CHESTER A. ARTHUR. } 5479.

This cause came on to be tried on January 27th, 1880, before Honorable Nathaniel Shipman, judge, and a jury, and to sustain the issues on their

part the plaintiffs proved that eight cases of rosaries arrived at the port of Philadelphia from a foreign port on June 13, 1876. On September 6, 1876, one case was entered for consumption by the importer, one A. M. Lutton, and after being duly examined the duties were liquidated upon the entry and were collected and said case was delivered to the importer.

Upon the same date the other seven cases were entered for warehouse on regular trade invoice, containing the declaration of the owner taken before the United States consul-general at Paris.

19 Said seven cases remained in warehouse until December 13, 1876. They were duly examined and appraised by the proper officers of the customs at the port of Philadelphia and the duties and charges thereon were ascertained and liquidated by the collector of customs at Philadelphia at the invoice values.

On December 13th, 1876, said seven cases were withdrawn for transportation and were transported in bond from Philadelphia to the city of New York, consigned to the plaintiffs, C. B. Richards & Boas.

Upon the arrival of the goods at the custom-house at New York City the plaintiffs made rewarehouse and withdrawal entry thereof in the usual form and thereupon paid to the defendant, the collector at New York City, the duties and charges upon said goods as liquidated by the collector at the port of Philadelphia and all but one of said cases were then and there delivered by the defendant to the plaintiffs. The entered values at New York were the same as that entered, appraised, and liquidated at

20 Philadelphia. One of said cases was retained by the defendant for examination and comparison and was sent to the appraiser at the port of New York for examination, and upon such examination the appraiser made return upon said copy of invoice of the value of said goods and the case sent to him for examination as follows:

"M. F. P. 503. Case as noted. Balance classified December 30, 1876. Add to make market value as noted. Correct footing of invoice at prices as entered. A. Gilbert. Approved: S. B. French, appraiser."

The notations referred to upon the face of the invoice were the rate of duty upon the importations at fifty per centum ad valorem, the same rate as classified at Philadelphia, but the appraiser, acting by authority of section 2902, ascertained and appraised the true foreign market value of the goods to be upwards of ten per centum above the entered value of the goods.

21 The collector at New York, under instructions from the Secretary of the Treasury, liquidated, on the 2nd day of March, 1878, the duties upon the entry of said goods in accordance with the report of the appraiser at New York and exacted from the plaintiffs the sum of twenty-four hundred and ninety-six $\frac{70}{100}$ dollars, which sum was paid by the plaintiffs to the defendant under protest on June 29, 1878. And which said sum was made up by estimating fifty per centum ad valorem duty on the additional value of the goods as estimated by the appraiser at New York beyond the value as liquidated upon the entry at Philadelphia, and also twenty per centum ad valorem upon the entire value claimed by the collector at New York to be the value of the goods.

The plaintiffs duly protested against the action of the collector and duly appealed to the Secretary of the Treasury from the decision of the collector.

The protests were as follows:

22 "NEW YORK, *March* 7, 1878.

"CHESTER A. ARTHUR,
"*Collector of port of New York:*

"SIR: Our entry of M. F. P. 500,503–9, entered by us on a rewarehouse entry dated on or about December 15, 1876, to be withdrawn for immediate consumption upon transportation in bond from Philadelphia, we are advised has been liquidated by you on March 2, 1878, upon a different valuation and appraisal than that had and determined at the original port of entry; upon different charges and commissions, and with an additional duty of twenty per cent., and we therefore protest against your decision as to the rate and amount of duties to be paid thereon as follows:

"1st. The amount of duties should have been determined by you according to the valuation of said goods at Philadelphia, the port of original importation and entry.

"2nd. The goods in question having been entered and appraised
23 at Philadelphia, and there liquidated, no greater amount of duties can be demanded of us than the amount determined by that liquidation.

"3rd. The appraiser at New York had no power or authority to determine the value of the goods in question for the purpose of assessing duties.

"4th. Your liquidation of March 2, 1878, is without authority in law.

"5th. That the conditions of section 21 of the act of June 22nd, 1874, having been fulfilled, your liquidation and claim of enhanced duties is illegal and void.

"6th. That the duties accruing upon the Philadelphia liquidation and entry having been paid, and the goods, except the one case now in public store, having been delivered, and more than a year having elapsed since such entry, liquidation, payment, and delivery, and there being no fraud, such proceedings as to the delivered goods are conclusive upon the United
24 States, and the enhanced duties upon the delivered cases claimed by you do not accrue, and we specifically protest against their exaction.

"7th. That in no event had the appraiser at New York power or jurisdiction in a case like the present to re-examine or appraise goods not seen by him, and for this reason, as well as reasons aforesaid, we separately protest against the exaction of duties upon all those cases not seen by the appraiser in New York based upon his return of value.

"8th. That the exaction of any enhanced duty upon any of the cases, except the one designated upon the invoice for examination by the appraiser here, is for the reasons aforesaid irregular, illegal, and void.

"9th. We also protest against the enhanced duty claimed upon charges and commissions arbitrarily stated and assumed by you and by the appraiser at New York or either of you.

25 "10th. No additional or enhanced duty could legally accrue by reason of an enhanced valuation of these goods under the circumtances, except by the action of the appraiser at Philadelphia upon a re-examination of said goods by him.

"11th. We also separately and specifically protest against the exaction of an additional duty of twenty per centum, claiming that under he facts and circumstances of this case the same does not accrue, and that the appraisal made by the direction of the collector of the district within which the same were imported or entered within the meaning of the Revised Statutes, to wit, Philadelphia, did not exceed by ten per centum the invoice value of said goods.

"Lastly, we annex hereto and make part hereof copy of a protest made by us and filed with you August 20th, 1877, and we pay the excess exacted, under compulsion, solely to get the goods.

"C. B. RICHARDS & BOAS,
"*By their Attorneys, Stanley Brown & Clarke.*"

26 "SIR: We protest against your decision as to the rate and amount of duties to be paid on the goods contained in M. F. P. 500,503-9, entered by us on a rewarehouse entry Dec'r 15, 1876, to be withdrawn for immediate consumption upon transportation in bond from Philadelphia, because said merchandise is only liable under existing laws to the amount of duties assessed thereon upon entry at the port of Philadelphia, the port of original importation where said goods were originally imported per S. S. Lord Clive, June, 1876, and we particularly protest against your right to appraise and re-appraise the goods here, and to the assessment of the additional or penal sum of 20 per cent.

"We also protest against the duty assessed upon the difference in value claimed by you over and beyond the appraisement and duty at Philadelphia.

"We pay the excess exacted, under compulsion, solely to get the goods, and we make and protest to preserve all rights.

"C. B. RICHARDS & BOAS.
"By STANLEY, BROWN & CLARK,
Attorneys, No. 195 *Broadway*.

"COLLECTOR OF CUSTOMS,
"*New York City*."

27 Plaintiffs also introduced evidence tending to show that, except the case sent to public store for examination, the goods in question were delivered by the collector to plaintiffs and within a few days of their entry by the plaintiffs to a man in Barclay street for sale, and that such goods have never since been in the custody of the customs officers; that the collector called for them, but waived their production under said call.

The testimony being closed, the counsel for defendant made a motion to the court to direct the jury to find a verdict in favor of the defendant and against the plaintiffs, upon the ground that they failed to prove that
28 they asked in writing for a re-appraisement at the port of New York at any time after the appraisement at New York, and failed to appeal from the second appraisement made at New York.

Which motion was denied by the court, and to this ruling of the court counsel for defendant then and there excepted, which exception was duly noted and allowed by the court.

And thereafter, on motion of plaintiffs' counsel, no testimony having been offered by the defendant, the court directed the jury to find a verdict

for the plaintiffs for the sum of $2,773.41, being the amount with interest claimed by the plaintiffs in their said action.

To which ruling of the court the counsel for the defendant then and there excepted, which exception was duly noted and allowed by the court.

And inasmuch as the above exceptions taken and made to the rulings and decisions of the court, in the course of the said trial, do not appear upon the record of the trial, the counsel for the defendant caused
29 this bill of exceptions to be prepared, which was duly signed and sealed by the judge before whom the cause was heard, as and for the bill of exceptions in this case, the 10th day of May, 1880.

N. SHIPMAN, [L. S.]
Judge.

(Endorsed:) U. S. circuit court, southern district of New York. Charles B. Richards & ano. vs. C. A. Arthur, defendant. Bill of exceptions. Stewart L. Woodford, U. S. attorney. Due service of a copy of the within is hereby admitted, July 20, 1880. Stanley, Clarke, & Smith, pl'ff's attorneys. U. S. circuit court. Filed July 21, 1880. John I. Davenport, clerk.

30 *Assignment of errors.*

Supreme Court of the United States.

CHARLES E. MILLER AND DANIEL G. ROLLINS, executors of Chester A. Arthur, deceased, plaintiff in error,
vs.
CHARLES B. RICHARD AND EMANUEL BOAS, defendant in error.

Afterwards, to wit, on the fourth Monday of October in the same term, before the justices of the said court at the Capitol in Washington, come the said plaintiffs in error by Stephen A. Walker, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendants in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs against the said defendants.

And the said plaintiff, pray that the judgment aforesaid for the error aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they the said plaintiffs may be restored to all things which they have lost by occasion of said judgment, &c.

STEPHEN A. WALKER,
Attorney for Plaintiffs in Error.

31 United States Supreme Court. Charles E. Miller & ano., executors, &c., plaintiffs in error, vs. Charles B. Richard & ano., defendants in error. Assignment of error. Stephen A. Walker, attorney for plaintiffs in error. Due service of a copy of the within assignment of

error is hereby admitted, this 24 day of September, 1888. Stanley, Brown & Clarke, attorney for defendants in error. To Stanley, Brown & Clarke, attorneys for defendants in error. U. S. circuit court. Filed Sept. 24, 1888. John A. Shields, clerk.

32 *Joinder in error.*

Supreme Court of the United States.

CHARLES E. MILLER AND DANIEL G. ROLLINS, executors, &c., pl'ffs in error,
vs.
CHARLES B. RICHARD AND EMANUEL BOAZ, def'ts in error.

And afterwards, to wit, on the fourth Monday of October, in said term, the said defendants in error, by Stanley, Brown & Clarke, their attorneys, come here into court and says that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And they pray that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned, for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

STANLEY, BROWN & CLARKE,
Attorneys for Defendants in Error.

33 United States Supreme Court. Charles E. Miller et al., ex'rs &c., plaintiffs in error, vs. Charles B. Richard, et al., defendants in error. Joinder in error. Stanley, Brown & Clarke, attorneys for defendants in error. Due service of a copy of the within joinder in error is hereby admitted, this 29 day of September, 1888. Stephen A. Walker, attorney for plaintiffs in error. To Stephen A. Walker, attorney for plaintiffs in error. U. S. circuit court. Filed Sep. 29, 1888. John A. Shields, clerk.

34 UNITED STATES OF AMERICA, *ss:*

To Charles B. Richard & Emanuel Boas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the fourth Monday of October, eighteen hundred and eighty-eight, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Charles E. Miller and Daniel G. Rollins, executors, &c., of Chester A. Arthur, deceased, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated, September 21th, 1888.

E. HENRY LACOMBE.

35 (Indorsed:) U. S. Supreme Court. 5479. Charles E. Miller & ano. executors, &c., plaintiffs in error, against Chas. B. Richard, & ano., defendants in error. Citation. Stephen A. Walker, attorney for plaintiffs in error. Due service of a copy of the within citation is hereby admitted, this 24 day of Sept. 1888. Stanley, Brown & Clarke, attorney for defendant in error. U. S. circuit court. Filed Sep. 24, 1888. John A. Shields, clerk.

(Indorsement on cover:) No. 1179. Charles E. Miller and Daniel G. Rollins, executors of Chester A. Arthur, deceased, late collector of the port of New York, plaintiffs in error, vs. Charles B. Richard and Emanuel Boas. S. New York, C. C. U. S. Filed October 2, 1888.

Supreme Court of the United States.

OCTOBER TERM, 1888.

CHARLES E. MILLER AND DANIEL G. Rollins, executors, etc, plaintiffs in error,
vs.
CHARLES B. RICHARD AND EMANUEL Boas.

No. 1179.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Supreme Court of the United States.

OCTOBER TERM, 1888.

CHARLES E. MILLER AND DANIEL G. Rollins, executors, etc., plaintiffs in error,
vs.
CHARLES B. RICHARD AND EMANUEL Boas.
} No. 1179.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFFS IN ERROR.

This is an action to recover back the sum of $2,496.70, with interest from June 29, 1878, the said sum representing an alleged illegal exaction of duties by the testator of the plaintiffs in error, then collector of the port of New York.

In June, 1876, one A. M. Sutton duly imported into the United States from Liverpool, in the

ship *Lord Clive*, eight cases of beads, or rosaries, marked respectively M. F. P., 500, 503–509. The vessel and merchandise were entered at the port of Philadelphia.

One case was entered for consumption and delivered to the importer on payment of the duties assessed against it.

The other seven cases were entered for warehouse (p. 8).

On December 13, 1876, the said seven cases were withdrawn for transportation, and were transported in bond from Philadelphia to the city of New York, consigned to C. B. Richards & Boas (p. 8).

On the arrival of the packages in New York the plaintiffs below, Richards & Boas, made a re-warehouse and withdrawal entry of the packages, and thereupon paid the collector at New York City the duties and charges on said goods, as the same had been liquidated by the collector of the port of Philadelphia, and thereupon all of the packages, *except one*, were delivered to Rich-

ards & Boas. One package or case was retained for examination and comparison, and was sent to the appraiser, who found that there had been an undervaluation, and the amount sued for is made up of the duty of 50 per cent. on the difference between the valuations and 20 per cent. ad valorem on the entire value claimed by the collector of the port of New York to be the value of the goods (p. 8).

The plaintiffs duly protested, but the collector's decision was affirmed by the Secretary of the Treasury.

Upon this state of facts, the defendant having offered no testimony, the learned judge directed the jury to find for the plaintiffs to the whole extent of their claim (pp. 10, 11), to which ruling the defendant excepted (p. 11).

ASSIGNMENT OF ERROR.

The judgment is erroneous in this, that the court directed the jury to find for the plaintiffs, whereas the jury should have been told to find for the defendant.

ARGUMENT.

So long as the matter of appraisement of the merchandise and liquidation of the duties thereon was *in fieri* it was open to the collector in whose hands the merchandise was to re-appraise and re-liquidate.

In the absence of any protest or objection, the retention by the collector of one package after payment of all duties and charges up to that time *assessed against all the packages*, may be presumed to have been with the plaintiffs' consent for the purposes of revaluation and re-assessment of the whole lot, if deemed proper by the collector. If this presumption does not hold, how are the act of the collector and the plaintiffs' acquiescence in that act to be interpreted? Certainly the plaintiffs could waive their strict legal right to stand on the appraisement and liquidation made at the port of Philadelphia, if any such right they had, particularly when that supposed waiver was in favor of the revenue.

It is true, all the packages were not in the collector's hands, but where one package of a lot

of packages, all included in the same invoice and containing the same description of merchandise, is retained by the collector an appraisement based on the package withheld as a sample for the purposes of re-appraisal and reliquidation, it must be assumed, is perfectly good and will support a reliquidation of the duties on all the packages. It seldom happens that all of a number of packages, noted by the invoice to contain the same description of merchandise, are opened and examined for the purposes of appraisement.

The due protection of the revenue demands that this power to revalue and reliquidate, so long as the importation is, in whole or in part, under the collector's control, should be lodged in the collector.

The plaintiff's case fails to show that his payment of the additional duties was involuntary. Indeed it is clear that the payment as to the duties on the packages already delivered was *purely voluntary* (U. S. *v.* Schlesinger, 120 U. S. R., 109).

The reappraisal and reliquidation were approved by the collector at Philadelphia and by the Secretary of the Treasury, as the archives here show. The Government has gotten what is due to it, and shall it not be allowed to retain it?

But it is claimed that the liquidation made by the collector of the port of Philadelphia is final and conclusive on the United States under section 21 of the act of 22d June, 1874, entitled "An act to amend the customs-revenue laws and to repeal moities" (18 Stat., 186), which is in the following words:

> That whenever any goods, wares, and merchandise shall have been entered and passed free of duty, and whenever duties upon any imported goods, wares, and merchandise shall have been liquidated and paid, and such goods, wares, and merchandise shall have been delivered to the owner, importer, agent, or consignee, such entry and passage free of duty and such settlement of duties shall, after the expiration of one year from the time of entry, in the absence of fraud and in the absence of protest by the owner, importer, agent, or consignee, be final and conclusive upon all parties.

But it will be observed that although the second liquidation was made more than one year after the first, and although the duties and charges, as liquidated in Philadelphia, had been paid on all the packages, still, *so long as any part*

of the original importation remained undelivered in the collector's hands, the bar of the statute did not attach.

It is respectfully submitted, therefore, that there is error in the judgment.

WM. A. MAURY,
Assistant Attorney-General.